

procedures for the submission of a licensee certification for Federal assistance under Executive Order 12657; (2) set forth policies and procedures for FEMA's determination to accept, accept with modification, or reject the licensee certification; (3) establish a framework for providing Federal assistance to licensees; and (4) provide procedures for the review and evaluation of the adequacy of offsite radiological emergency planning and preparedness. Findings and determinations on offsite planning and preparedness made under this part are provided to the NRC for its use in the licensing process.

(c) This part applies only in instances where Executive Order 12657 is used by a licensee and its provisions do not affect the validity of the emergency preparedness developed by the licensee independent of or prior to Executive Order 12657.

### Subpart A—Certifications and Determinations

#### § 352.3 Purpose and scope.

This subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

#### § 352.4 Licensee certification.

(a) A licensee which seeks Federal assistance under this part shall submit a certification to the host FEMA Regional Administrator that a decline or fail situation exists. The certification shall be in the form of a letter from the chief executive officer of the licensee. The contents of this letter shall address the provisions set forth in paragraphs (b) and (c) of this section.

(b) The licensee certification shall delineate why such assistance is needed based on the criteria of decline or fail

for the relevant State or local governments.

(c) The licensee certification shall document requests to and responses from the Governor(s) or responsible local official(s) with respect to the efforts taken by the licensee to secure their participation, cooperation, commitment of resources or timely correction of planning and preparedness failures.

[54 FR 31925, Aug. 2, 1989, as amended at 74 FR 15357, Apr. 3, 2008]

#### § 352.5 FEMA action on licensee certification.

(a) Upon receiving a licensee certification, the host Regional Administrator shall immediately notify FEMA Headquarters of the licensee certification. Within 5 days the host Regional Administrator shall notify the Governor of an affected State and the chief executive officer of any local government that a certification has been received, and make a copy of the certification available to such persons. Within 10 days, the host Regional Administrator shall acknowledge in writing the receipt of the certification to the licensee.

(b) Within 15 days of receipt of the certification, the Regional Administrator shall publish a notice in the FEDERAL REGISTER that a certification from the licensee has been received, and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) FEMA Headquarters shall notify the NRC of receipt of the certification and shall request advice from the NRC on whether a decline or fail situation exists.

(d) State and local governments may submit written statements to the host Regional Administrator outlining their position as to the facts stated in the letter of certification. Such statements shall be submitted to FEMA within 10 days of the date of notification provided to State and local government under § 352.5(a). Any such statements shall be a part of the record and will be considered in arriving at recommendations or determinations made under the provisions of this part.

(e) The host FEMA Regional Office shall provide, after consulting with

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State and responsible local officials, a recommended determination on whether a decline or fail situation exists to the FEMA Deputy Administrator for the National Preparedness Directorate within 30 days of receipt of the licensee certification.

(f) The FEMA Deputy Administrator for the National Preparedness Directorate shall make a determination on whether a decline or fail situation exists within 45 days of receipt of the licensee certification and shall advise the licensee, NRC, and State and local officials.

(g) The times for actions set out above may be extended up to an aggregate of 30 days by the host Regional Administrator or Deputy Administrator for the National Preparedness Directorate, as appropriate.

### **§ 352.6 FEMA determination on the commitment of Federal facilities and resources.**

(a) A licensee request for Federal facilities and resources shall document the licensee's maximum feasible use of its resources and its efforts to secure the use of State and local government and volunteer resources.

(b) Upon a licensee request for Federal facilities and resources, FEMA headquarters shall notify NRC and request advice from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1). The host FEMA Regional Administrator shall make a recommendation to the FEMA Deputy Administrator for the National Preparedness Directorate on whether the provision of these facilities and resources is warranted. The FEMA Deputy Administrator for the National Preparedness Directorate shall make a final determination as to whether Federal facilities and resources are needed.

(c) In making the determination under paragraph (b) of this section, FEMA:

(1) Shall work actively with the licensee, and before relying upon any Federal resources, shall make maximum feasible use of the licensee's own resources, which may include agreements with volunteer organizations

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and other government entities and agencies; and

(2) Shall assume that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(d) The FEMA Deputy Administrator for the National Preparedness Directorate shall make a determination on the need for and commitment of Federal facilities and resources. The FEMA determination shall be made in consultation with affected Federal agencies and in accordance with 44 CFR 352.21. FEMA shall inform the licensee, the States and affected local governments in writing of the Federal support which will be provided. This information shall identify Federal agencies that are to provide Federal support, the extent and purpose of the support to be provided, the Federal facilities and resources to be committed and the limitations on their use. The provision of the identified Federal support shall be made under the policies and procedures of subpart B of this part.

### **§ 352.7 Review and evaluation.**

FEMA shall conduct its activities and make findings under this part in a manner consistent with 44 CFR part 350 to the extent that those procedures are appropriate and not inconsistent with the intent and procedures required by E.O. 12657. This Order shall take precedence, and any inconsistencies shall be resolved under the procedures in the NRC/FEMA Memorandum of Understanding (MOU) on planning and preparedness. (50 FR 15485, April 18, 1985)

## **Subpart B—Federal Participation**

### **§ 352.20 Purpose and scope.**

This subpart establishes policy and procedures for providing support for offsite radiological emergency planning and preparedness in a situation where Federal support under Executive Order 12657 (E.O. 12657) has been requested. This subpart:

(a) Describes the process for providing Federal technical assistance to